

D. Michael Frink
Curtis Thaxter Stevens
Broder & Micoleau LLC
One Canal Plaza, Suite 1000
Portland, ME 04101

207-774-900 voice
207-775-0612 fax
mfrink@curtisthaxter.com

March 13, 2006

VIA Electronic Mail and Hand Delivery

Board of Directors, Dirigo Health Agency
Attn: Lynn Theberge
Dirigo Health Agency
211 Water Street
Augusta, ME 04333-0053

In Re: Determination of Aggregate Measurable Cost Savings
For The Second Assessment Year (2007)

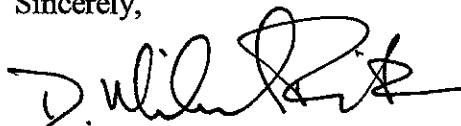
FILING COVERSHEET

Dear Ms. Theberge:

Enclosed for filing please find the following:

Submitted by: D. Michael Frink
Date Filed: March 13, 2006
Party: Maine Association of Health Plans ("MEAHP")
Document: MEAHP's Identification of Proposed Methodology for Determining
Aggregate Measurable Cost Savings for the Second Assessment Year
Document Type: Identification of Proposed Methodology
Confidential: NO

Sincerely,



D. Michael Frink

cc: Service List

IN RE:

MAINE ASSOCIATION OF HEALTH PLANS' IDENTIFICATION OF ALTERNATIVE METHODOLOGY AND SUPPORTING DATA

The Procedural Order purports to require each party “intending to propose a methodology to determine aggregate measurable cost savings” in this proceeding to file with the DHA Board, by 5:00 PM March 13, 2006, “a detailed description of [that] methodology . . . including the components to be included in aggregate measurable cost savings (“AMCS”). . . and credible, reliable, and accurate data that supports the amount of aggregate measurable cost savings derived from that methodology.” See Procedural Order No. 3, ¶3(e). The Procedural Order requires the intervenors to designate witnesses, provide summaries of witness testimony, produce documents, designate experts, and describe their alternative methodologies to determine aggregate measurable cost savings, all prior to the DHA filing its proposed methodology and supporting data for calculating AMCS for the second assessment year. Moreover, DHA has not yet

produced a single document in response to MEAHP's and Anthem BCBS's requests for public records, and neither the DHA nor the intervenor Consumers for Affordable Health Care have complied with the deadline of March 10, 2006 in the Procedural Order for listing witnesses (and providing summaries of testimony), identifying experts (including Rule 26 disclosures), and documentation. None of these undisputed acts comports with the due process requirements for an adjudicatory hearing conducted in accordance with the Maine Administrative Procedures Act. Because DHA has not yet revealed its proposed DHA Methodologies, and has not yet provided access to public records pursuant to the various parties' FOAA requests, MEAHP can only preliminarily describe any alternative methodology and the supporting data. As a result, MEAHP reserves the right to revise its methodology or adopt new methodologies once the DHA reveals and explains the DHA Methodologies, and discloses all relevant documentation. Subject to and without waiving said objections, MEAHP provides the following description of an alternative methodology for calculating AMCS.

II. ALTERNATIVE METHODOLOGY

A. Description of Methodology, Including Components to be Included in Aggregate Measurable Cost Savings

Any alternative methodology presented by MEAHP in this hearing will depend largely on the methodology proposed by the DHA for the second assessment year and the documents and information requested for production by the intervenors in their respective Freedom of Access Act ("FOAA") requests to DHA, none of which is available as of the date of this submission. As such, MEAHP's alternative methodology as identified in this filing is subject to change.

MEAHP maintains, as it did in the hearing before the Superintendent of the Bureau of Insurance ("Superintendent") to determine AMCS for the first assessment year, and as it has in the appeal of the Superintendent's decision to the Superior Court, that the Dirigo Act (the "Act") prescribes the limited categories of information which should be considered in making a determination of aggregate measurable cost savings ("AMCS"):

any reduction or avoidance of bad debt and charity care costs to health care providers in this State as a result of the operation of Dirigo Health and any increased enrollment due to an expansion in MaineCare eligibility occurring after June 30, 2004.

24-A M.R.S.A. § 6913(1).¹ Therefore, AMCS should reflect only savings from the reduction of bad debt and charity care, as a result of the operation of Dirigo Health, and the expansion of MaineCare enrollment occurring after June 30, 2004. MEAHP contends that this measure of the reduction in bad debt and charity care costs is the only measurement properly before the DHA Board at this hearing, and that all other cost savings are beyond the scope of section 6913.

Although the DHA has not yet produced the DHA Methodology, MEAHP assumes for the purposes of this filing that the DHA will propose a methodology similar to the uninsured and underinsured initiatives contained in the Mercer report and at issue before the Superintendent of Insurance in the first assessment year hearing. MEAHP joins with the Chamber in offering the following refinements to the uninsured and underinsured initiatives (as testified to by Mr. Sheils before the Superintendent). Any attempt to calculate savings related to reductions or avoidance of bad debt and charity care costs must:

1. employ a "cost basis" rather than a "charge basis" approach;

¹ Beyond this general prescription, the Act does not contain any guidelines or standards setting forth the mechanisms for calculating AMCS. Thus, it really is impossible to calculate AMCS pursuant to the Act.

2. correlate only to the applicable fiscal year (July 1, 2005 through June 30, 2006);
3. be reflective of actual changes in reported uncompensated care data;
4. account for the fact that only approximately 20-40% of reduced bad debts and charity care costs to providers are passed back to payers;
5. account for the fact that approximately 50% of the Maine market is insured under MaineCare and Medicare, and that Medicaid utilization (with its lower payment rates) has increased dramatically since 2002 creating additional cost shifting;
6. account for the fact that approximately 31% of all uncompensated care is attributed to people with incomes in excess of 300% of the federal poverty level;
7. account for continuing bad debt owing to deductibles for previously underinsured people now covered by Dirigo Choice;
8. not employ Mercer's unexplained 30% factor that increased putative savings;
9. not include the so-called "woodwork effect," as reductions in bad debt and charity care costs related to Medicaid may only be related to expansions in eligibility after June 30, 2004; and
10. be included in the calculation of AMCS only to the extent that such putative savings are realized and recoverable by payors in the form of lower prices paid to medical providers.

Because the DHA Methodology has not yet been disclosed, and the DHA declined to comply with the March 10, 2006 deadline specified in Procedural Order No. 3, and because MEAHP has not had a reasonable opportunity to review alternatives submitted by other parties, MEAHP reserves the right to revise its alternative methodology, to identify refinements or objections to any methodology proposed by the DHA or any other party, and to adopt, in whole

or in part, an alternative methodology proposed by any other party, once MEAHP has a reasonable opportunity to review the DHA methodology and any alternatives offered by other parties.

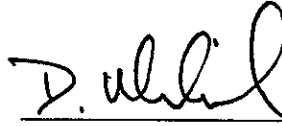
II. Description of Credible, Reliable and Accurate Data Supporting MEAHP's Alternative Methodology

MEAHP joins the Chamber in identifying information including: (1) Up-to-date Dirigo Health enrollment data (including the number of previously insured and uninsured members) on a month-by-month basis, (2) Up-to-date disenrollment data (including the number of previously insured and uninsured members) on a month-by-month basis, (3) all reports required by the Dirigo Health Act, 24-A M.R.S.A. § 6901 *et seq.*, or any related legislation, including the data underlying said reports; (4) hospital and physician data on uncompensated care (required to be collected by DHA); (5) data, reports, exhibits and calculations identified in Mr. John Sheils testimony before the Superintendent; (6) all documents responsive to a freedom of access request filed by any party; (7) all documents contained in the Administrative Record for the hearing before the Superintendent of Insurance in the first assessment year; (8) all discovery responses by any party in the hearing before the Superintendent of Insurance in the first assessment year. All documents identified above are presently in the possession of the DHA.

Because the DHA Methodology has not yet been disclosed, and the DHA and the CAHC declined to comply with the March 10, 2006 deadline specified in Procedural Order No. 3, MEAHP reserves the right to identify other data and documents, including the right to identify data and documents related to any methodology proposed by the DHA or any other party.

Date: March 13, 2006

Respectfully submitted,



D. Michael Frink, Esq.
George M. Linge, Esq.
Curtis Thaxter Stevens Broder & Micoleau LLC
One Canal Plaza
P.O. Box 7320
Portland, Maine 04112-7320
207-774-9000 (telephone)
207-775-0612 (facsimile)
mfrink@curthisthaxter.com

CERTIFICATE OF SERVICE

I, D. Michael Frink, attorney for the Maine Association of Health Plans, hereby certify that on this day the foregoing document was served on the following parties:

Board of Directors, Dirigo Health Agency

(2 copies—via hand delivery and electronic mail)

Attn: Lynn Theberge

Dirigo Health Agency

211 Water Street

Augusta, Maine 04333-0053

Email: lynn.c.theberge@maine.gov

Counsel for Dirigo Health Agency

(via U.S. Mail and electronic mail)

Kelly Turner, AAG

Assistant Attorney General

Department of Attorney General

6 State House Station

Augusta, Maine 04333-0006

Email: kelly.turner@maine.gov

Counsel for Dirigo Health Board

(via U.S. Mail and electronic mail)

William H. Laubenstein, III, Esq.

Office of the Attorney General

6 State House Station

Augusta, ME 04333-0006

Email: bill.laubenstein@maine.gov

Counsel for Anthem Health Plans of Maine, Inc.

(via U.S. Mail and electronic mail)

Christopher T. Roach, Esq.

Pierce Atwood, LLP

One Monument Square

Portland, ME 04101

Email: croach@pierceatwood.com

Counsel for Consumers for Affordable Health Care

(via U.S. Mail and electronic mail)

Joe Ditré, Esq.

Executive Director

Consumers for Affordable Health Care

PO Box 2490

Augusta, ME 04338-2490

Email: jditre@mainecahc.org

Counsel for the Maine State Chamber of Commerce

(via U.S. Mail and electronic mail)

William H. Stiles, Esq.

Verrill Dana, LLP

P.O. Box 586

One Portland Square

Portland, Maine 04112-0586

William H. Stiles Direct: (207) 253-4658

Email: wstiles@verrilldana.com

Counsel for Maine Automobile Dealers Assoc. Insurance Trust and Bankers Health Trust

(via U.S. Mail and electronic mail)

Bruce C. Gerrity, Esq.

Roy T. Pierce, Esq.

Preti Flaherty Beliveau Pachios & Haley, LLP

45 Memorial Circle

PO Box 1058

Augusta, Maine 04332-1058

Email: rpierce@preti.com

Hearing Officer

(via U.S. Mail and electronic mail)

Attn: James Smith, Hearing Officer

Dirigo Health Agency


211 Water Street

53 State House Station

Augusta, Maine 04330-0053

Email: jsmmsmith@aol.com

Dated: March 13, 2006

A handwritten signature in black ink, appearing to read "D. Michael Frink", written over a horizontal line.

D. Michael Frink, (Bar No. 2637)